

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
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5 JON PAUL SIMS,

6 Plaintiff(s),

7 vs.

8 METROPOLITAN LIFE INSURANCE  
9 COMPANY AND DOES 1 THROUGH  
10 100, inclusive,

11 Defendant(s).

Case No. 05 CV 2980 (TEH)

**STIPULATION OF CONFIDENTIALITY  
AND PROTECTIVE ORDER**

The Honorable Thelton E. Henderson

12 IT IS HEREBY STIPULATED AND AGREED, by and between the parties in the  
13 above-captioned matter, and by and between their undersigned counsel, that:

14 "Confidential Material" shall include the documents and other material identified  
15 as such in accordance with paragraphs 3-5 below. "Confidential Material" shall be  
16 accorded the protections referred to in paragraphs 6-12 of this Order.

17 "Action" or "this action" shall refer to the above-captioned action and to no other  
18 action.

19 1. Any party may in good faith designate as Confidential Material, and  
20 subject to this Confidentiality Agreement and Protective Order, any document,  
21 information or material that is either; (i) produced during discovery proceedings in this  
22 action; (ii) included in an order of this Court; or (iii) generated by a party in this action,  
23 including but not limited to, answers to interrogatories and responses to any request for  
24 the production of documents and which constitute or contain proprietary or sensitive  
25 business, personal or personnel information or any extracts or summaries thereof.

26 2. Acceptance by any party of discovery material designated as  
27 "Confidential Material" shall not constitute a concession that any such discovery material  
28 is appropriately so designated.

1           3.     (a) All documents, information and other discovery materials shall  
2 be treated as Confidential Material subject to this Confidentiality Agreement and Order  
3 without the need for any designation until the end of the seventh day after the date on  
4 which it is/they are produced.

5                     (b) Documents and other discovery materials may be designated as  
6 Confidential Material: (i) by affixing a legend to every page of the document at the time  
7 of production; (ii) by agreement in writing between the producing and receiving parties at  
8 any time; (iii) with respect to deposition testimony, in accordance with the procedures set  
9 forth in Paragraph 4 below; or (iv) with respect to motion papers, in accordance with the  
10 procedures set forth in Paragraph 5 below. If the designation in question is disputed by  
11 the receiving party, then the receiving party shall so notify the designating party in writing  
12 within ten (10) days of receipt of the documents or other discovery materials. The  
13 documents or discovery materials in dispute shall remain Confidential Material subject to  
14 the terms of this Order. If the parties are unable to resolve their dispute, then either party  
15 may move the Court for an order approving or removing the confidential designation, and  
16 the non-moving party may oppose such motion. The designated material shall be deemed  
17 Confidential Material until the issue is resolved by the Court.

18           4.     Any person giving deposition testimony in this action may, directly  
19 or through counsel, designate his or her testimony or any portion thereof (including  
20 exhibits), whether or not previously designated as Confidential Material, as Confidential  
21 Material by advising the court reporter and all parties of such fact on the record during the  
22 deposition, or in writing at any time up to and including the seventh day after the date of  
23 receipt of the deposition transcript. Deposition testimony shall automatically be deemed  
24 to be Confidential Material subject to the terms of this Order until the end of the seventh  
25 day after the date of receipt of the deposition transcript. In addition, any party may  
26 designate as Confidential Material, in accordance with the provisions of Paragraphs 3 or 4  
27 hereof, all or any part of any deposition taken in this action. All copies of deposition  
28 transcripts designated as or containing Confidential Material shall be prominently marked

1 “Confidential Material” on the cover thereof. If this designation is disputed by the  
 2 receiving party, then the receiving party shall so notify the designating party in writing.  
 3 The deposition testimony in dispute shall remain Confidential Material subject to the  
 4 terms of this Order. If the parties are unable to resolve their dispute, then either party may  
 5 move the Court for an order approving or removing the confidential designation and the  
 6 non-moving party may oppose such motion. The designated material shall be deemed  
 7 Confidential Material until the issue is resolved by the Court.

8           5. Motion papers or other Court filings, including exhibits, that disclose  
 9 Confidential Material shall be the subject of an application to file the Confidential  
 10 Material under seal pursuant to Rule 79-5 of the Civil Local Rules for the United States  
 11 District Court, Northern District of California. Nothing shall be filed under seal and the  
 12 Court shall not be required to take any action without a separate prior order by the judge  
 13 before whom the hearing or proceeding will take place after application by the affected  
 14 party with appropriate notice to opposing counsel. If the receiving party disputes a  
 15 confidential designation of motion papers or exhibits, then the receiving party must notify  
 16 the designating party of that dispute in writing. If the parties are unable to resolve their  
 17 dispute, either party may move the Court for an order approving or removing the  
 18 confidential designation and the non-moving party may oppose such motion. In the  
 19 interim, the designated material shall be deemed Confidential Material until the issue is  
 20 resolved by the Court.

21           6. All Confidential Material shall be used only for the purposes of this  
 22 action and shall not be used for any other purpose except upon written consent of the  
 23 designating party or order of this Court, unless the Confidential Material was obtained  
 24 lawfully and independently of the designating party.

25           7. Confidential Material shall be held in confidence and shall not be  
 26 intentionally or recklessly revealed, discussed, or disclosed in any manner, in any form, to  
 27 any person or entity other than:

28           (a) the Court in this action;

(b) counsel for any party retained in or working on the prosecution, defense, or settlement of this action including co-counsel and counsel employed directly by any party;

(c) employees of counsel and persons assigned to assist counsel in the prosecution, defense, or settlement of this action;

(d) individual parties, including the Plaintiffs and/or class members following the certification of any class and any director, officer or employee of any party to this action, to the extent deemed necessary by counsel for the prosecution, defense or settlement of this action;

(e) putative class members signing the Confidentiality Agreement may review only the personnel files and payroll records of those other putative class members who sign and provide Defendant's counsel with enforceable waivers of their privacy rights which release any and all claims against Defendant arising from any disclosure of their personnel files and payroll records; and,

(f) witnesses, experts, and consultants, but only to the extent reasonably deemed necessary by counsel for the prosecution, defense or settlement of this action and only if the witnesses and consultants sign the Confidentiality Agreement.

8. Any disputes between counsel regarding the scope of Confidential Material will be resolved by the Court. Upon the request of any counsel, counsel agree to meet promptly to review and resolve informally issues centering on Confidential Material. If such meeting fails to resolve any disputes, the parties shall promptly seek the Court's assistance. Pending the Court's resolution of such issues, such material shall remain designated as Confidential Material.

9. Prior to the disclosure of any Confidential Material to Plaintiffs, Defendants, or any individual entitled to review such information pursuant to the provisions of the preceding paragraphs 7(e) and/or 7(f), such individual shall be provided with a copy of this Confidentiality Agreement and Protective Order and be instructed to read it. After such person has read the Agreement, he or she shall be required to sign a

1 copy of the attached agreement acknowledging that he or she shall abide by the terms of  
 2 this Agreement and Order. The parties agree to obtain and retain a signed copy of the  
 3 attached agreement from any individual, including any nonparty deponents, to whom  
 4 Confidential Material is disclosed.

5 10. The inadvertent or unintentional disclosure by any party of  
 6 Confidential Material, regardless of whether the information was so designated at the time  
 7 of the disclosure, shall not be deemed a waiver in whole or in part of a party's claim of  
 8 confidentiality, either as to the specific information disclosed or as to any other  
 9 information disclosed or as to any other information relating thereto on the same or related  
 10 subject matter.

11 11. Nothing contained in this Confidentiality Agreement and Protective  
 12 Order shall affect or restrict the rights of any party with respect to its own documents.

13 12. A producing party may notify in writing the other party that  
 14 documents that should have been designated Confidential Material were inadvertently  
 15 produced without being so designated. Upon receiving such written notice from the  
 16 producing party, the receiving party shall thereafter treat the documents as Confidential  
 17 Material pursuant to this Protective Order.

18 13. Upon final termination of this action, a party producing Confidential  
 19 Material may request the return or destruction of all such material and of other documents  
 20 containing information or data from the Confidential Material, and all copies thereof made  
 21 by or on behalf of the receiving parties, and the receiving parties shall comply with such  
 22 request unless otherwise ordered by the Court. Notwithstanding this provision, Counsel  
 23 are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal  
 24 memoranda, correspondence or attorney work product, even if such materials contain  
 25 Confidential Material. Any such archival copies that contain or constitute Confidential  
 26 Material remain subject to this Confidentiality Agreement and Protective Order.  
 27 Moreover, any such Confidential Material shall not be used by Counsel in any way in any  
 28 other matter, including in any other case, action or proceeding.

1           14. The provisions of this Order are without prejudice to any application  
2 by any party at any time, on notice, for a modification or dissolution of or relief from this  
3 Agreement and Order or any provision hereof.

4           15. The parties and their attorneys, and all other persons agreeing to this  
5 undertaking, shall be responsible to see that the purpose and effect of this Order is  
6 achieved.

7           16. The foregoing is entirely without prejudice to the right of any party to  
8 apply to the Court for any further Protective Order relating to any confidential documents  
9 or information; or to apply to the Court for an order compelling production of documents;  
10 or for the modification or the relaxation of this Order.

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17. The Court may modify the Protective Order in the interests of justice or public policy.

Dated: November 10, 2005

MORGAN, LEWIS & BOCKIUS LLP

By: *Rebecca Eisen*  
Rebecca Eisen

Attorneys for Defendant  
METROPOLITAN LIFE INSURANCE  
COMPANY

Dated: November 9, 2005

THE EDGAR LAW FIRM

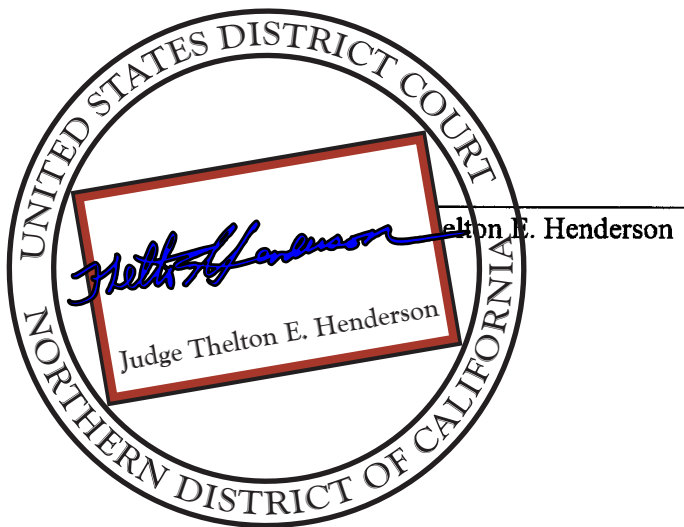
By: *Jeremy R. Fietz*  
Don Edgar  
Jeremy Fietz

Attorneys for Plaintiff  
JON PAUL SIMS

**ORDER**

IT IS SO ORDERED.

Dated: November 14, 2005



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UNITED STATES DISTRICT COURT  
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JON PAUL SIMS,

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vs.

METROPOLITAN LIFE INSURANCE  
COMPANY AND DOES 1 THROUGH  
100, inclusive,

Defendants.

Case No. 05 CV 2980 (TEH)

**STIPULATION OF CONFIDENTIALITY  
AND PROTECTIVE ORDER**

The Honorable Thelton E. Henderson

I have been provided with a copy of the annexed Confidentiality Agreement and  
Protective Order. I have thoroughly reviewed its terms, and I agree to abide by those terms.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_